



# JCOPE ETHICS SEMINAR

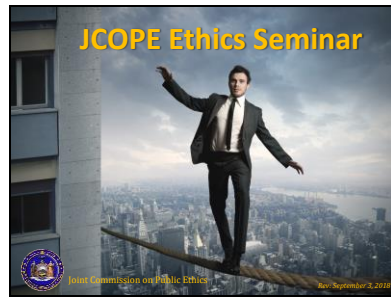
## Trainer Notes

September 3, 2019



NYS Joint Commission on Public Ethics

## Slide 1



- Welcome – Introductions
- Disclaimer: NOT comprehensive - Course designed to be “refresher” & focuses on key concepts & changes to law.
- Plain Language Guide: resource guide to Public Officers Law, but not written to follow slide by slide with presentation.

Image: At times the ethics laws may feel like you’re walking a tight rope, navigating potential conflicts of interests on one hand, while balancing your own personal interests on the other. This course is designed to help you navigate those conflicts.

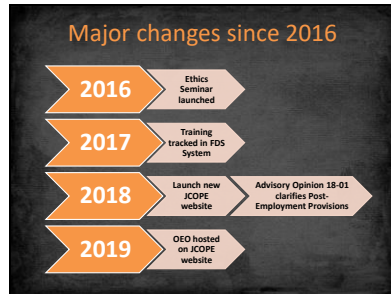
## Slide 2



Today, we hope to make navigating ethics laws a little easier. The purpose of today's training is to...

*(review slide)*

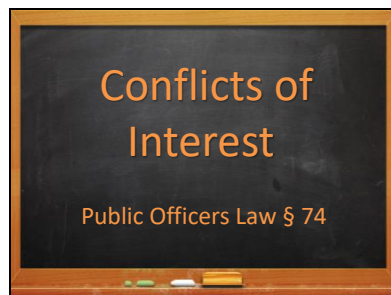
## Slide 3



There have been no changes to Ethics Laws or regulations since 2015. Let's take a moment to review some of the other changes that have occurred since many of you have last taken ethics training.

- In 2016, the Ethics Seminar course was launched, giving FDS filers a second course option to satisfy the ethics refresher training requirement.
- In 2017, ethics training history began being tracked within the FDS System.
- In 2018, the new JCOPE website is launched, with more information and easier navigation. Also, an AO issued that clarifies post-employment provisions.
- In 2019, the Online Ethics Orientation was moved from the Statewide Learning Management System to the JCOPE website to improve access for new filers.

## Slide 4

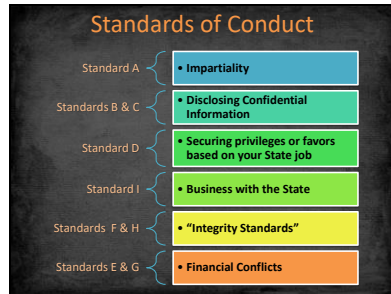


Avoiding conflicts of interest lies at the heart of POL§74. It contains The Code of Ethics, the foundation of the State Ethics Laws, which provides guidelines for making ethical choices while in state service.

- The Code of Ethics outlines broad concepts that address actual conflicts of interest, as well as the appearance of such conflicts, when acting in your official capacity.
- It's not meant to address everyone's specific set of circumstances. JCOPE and your agency ethics officer are resources to help you with your specific set of circumstances.

Segue: Let's review the Code of Ethics...

## Slide 5



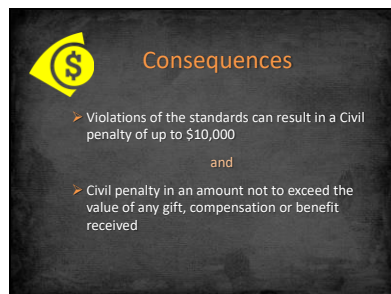
The Code of Ethics describes 9 Standards of Conduct which aim to prevent conflicts of interest; they apply to all NYS employees. These can be found on pg 13 of the Plain Language Guide (PLG).

*(briefly review standards)*

- (A) Impartiality – maintaining an independence of judgment when performing your state job
- (B & C) Confidentiality – 1.) Knowing what's confidential in your official position; 2.) Not disclosing confidential information you have access to due to your state employment; and 3.) Not disclosing confidential information to benefit yourself or someone else.
- (D) Misuse of Position/Resources - 1) Prevents you from securing unwarranted privileges or favors based on your State job and 2) Stewardship of state resources – not using resources of the state for personal use (state vehicle, printers, computers, etc.)
- (I) Business with the state – you can't contract for work with entities that are licensed or regulated by your agency (Example: I work for DOH, Acme hospital is regulated by DOH; I can't contract for work with Acme. I also may be prohibited from working at Acme as DOH employee.)
- (F & H) Integrity standards — examines your actions through the lens of the public. Conduct yourself in a manner that does not: 1) give an impression that you could be influenced or would attempt to influence someone else; 2) raise suspicion among the public that you're personally benefitting from your official position.

- (E & G) Financial Conflicts – abstain from personal investments that conflict with your official duties as a NYS employee; abstain from transactions with any entity in which you may have a direct or indirect financial interest. You can't participate in any matter related to your state employment where you may have the opportunity to gain financially.

Slide 6



What are the consequences if you violate these standards? They can be pretty severe; JCOPE can offer a civil penalty of up to \$10,000. In addition, your agency may initiate disciplinary action, and you could potentially lose your job.

Public Officers Law §74(3) (a), (b), (c), (d), (e), (g), & (i):

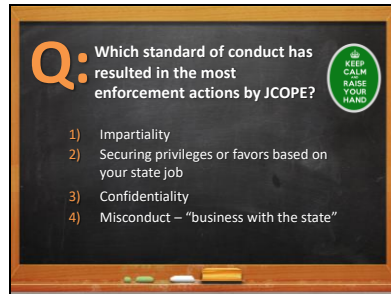
Civil penalty of up to \$10,000 plus the value of any gift, compensation, or benefit received as a result of violation

Slide 7



In light of those Standards of Conduct, let's see what you think is the area where the most violations occur.

## Slide 8



Look at the standards of conduct on pg 13 of the PLG handout.

*(Review question & possible responses)*

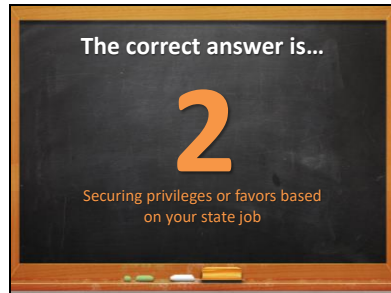
If you think the answer is 1) Impartiality, raise your hand...

*{count hands & record responses for all 4}*

You can vote more than once...

Segue: Well let's see where the most violations occur...

## Slide 9

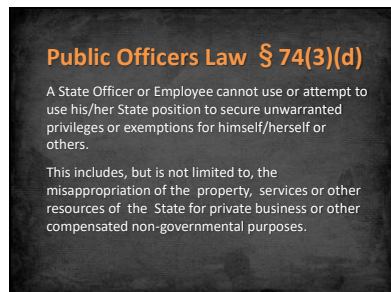


So which standard of conduct has resulted in the most enforcement actions by JCOPE?

The correct answer is 2 - securing privileges or favors based on your State job (Standard D)

Segue: Since this is the standard that sees the most violations, let's take a closer at it.

## Slide 10



Standard D focuses on two things:

- Attempting to secure special favors or privileges based on your state job; and
- Stewardship of state resources - not using the resources of the state for your own personal benefit. This goes beyond just using state resources - you may be actually stealing from the State if you are working on personal matters on State time.

Segue: Every time a state officer or employee violates standard D, they are chipping away at the public trust. Let's look at some real-world examples of how standard D can be violated.

## Slide 11



We've got a case of an employee who secured "unwarranted privileges" for himself.

Background:

- In the fall of 2012, Hurricane Sandy devastated the East Coast
- Sandy caused approximately \$19 billion dollars in damages in NYC area
- According to a report released by the National Hurricane Center, Sandy is ranked as the second costliest tropical storm
- In response to the public health emergency, FEMA sent 30 teams of workers into damaged areas of the New York region

## Slide 12

**The Case of the Fallen Tree**

Let's take a look at an employee who secured "unwarranted privileges" for himself.

- Following Hurricane Sandy, a director of the State Office of Emergency Management diverted crisis recovery workers to remove a tree that had fallen across the driveway of his Long Island home.
- Those workers were supposed to be clearing trees from public roads and highways that were impeding emergency response efforts throughout Long Island in the days following Hurricane Sandy.

An Emergency Management director diverted crisis recovery workers to remove a fallen tree from his driveway, who were supposed to be clearing trees from roads needed by emergency vehicles.

Segue: What do you think happened to this employee?

## Slide 13

**The Case of the Fallen Tree**

**Q:** What were the consequences?

- 1) Lose his job?
- 2) Pay a fine?
- 3) Written up by his superiors?
- 4) All of the above

KEEP CALM  
RAISE YOUR HAND

So what do we think were the consequences for this state employee?

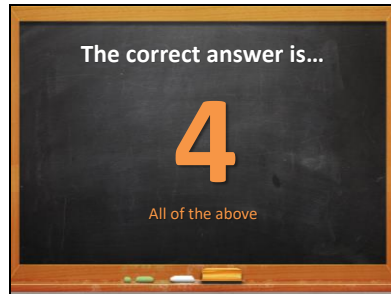
*(review answer choices)*

*{count hands & record responses for all 4}*

Segue: Let's see if you're right...



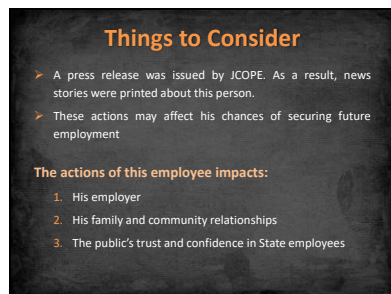
## Slide 14



Answer: He had multiple consequences for his actions.

Segue: Let's consider the impact this case has on public integrity...

## Slide 15



He was fined and fired, but that's just the beginning. A press release was issued by JCOPE and posted on our website that contained specific details on this employee's action, and subsequently newspaper stories were printed about this person.

- Newspaper stories like this never go away for the individual that violated the Public Officers Law.
  - These actions affected his chances of securing future employment – he eventually found a job in Colorado, but the story followed him there.

This misconduct impacted himself, the agency that employed him, the community in which this occurred, and negatively affected the public's trust and confidence in state employees as a whole.



## Slide 16

**Consequences**



Following an investigation by JCOPE...

- This former director faced disciplinary action by his agency, lost his job, and was fined \$4,000.

He was publicly fired by Governor Cuomo. Keep in mind that JCOPE can only impose civil penalties, but agency employers can also impose penalties, including termination.

That free tree service ended up costing him a lot.

Segue: Let's look at another case of a violation of Standard D

## Slide 17

**It's a family affair...**



Our next example is of a top level employee who used his official position to secure his son a job.

## Slide 18

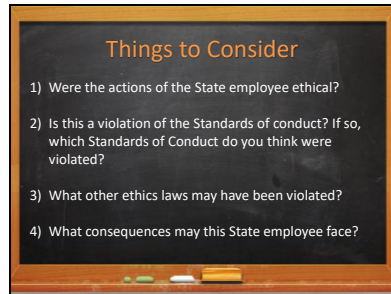
**It's a family affair...**

- A high ranking IT specialist from the MTA would like to help his son find a job at his agency.
- The high ranking officer asks his subordinates to guide his son through the MTA employment process.
- His son eventually gains employment with the MTA in the same division as this State officer (his father).

*(review summary)*

Segue: Helping your child land a job doesn't seem too sinister, but there's a right and wrong way to go about it when you are a public servant.

## Slide 19



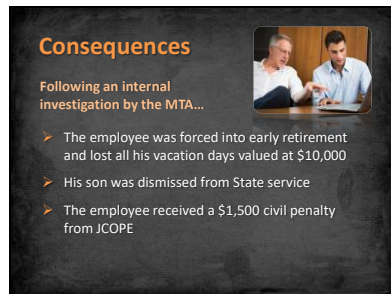
{Have participants refer to the “Standards of Conduct” on pg. 13 of PLG to answer Question 2.}

## Answers to the “Things to Consider”

- No – he is using his position to influence his subordinates
- Yes – securing privileges based his official position – Standard D
- Nepotism, POL §73
- Can be fined up to \$10k- *Refer to next slide*

Segue: So what happened?

## Slide 20



(Review slide)

Keep in mind that JCOPE can levy fines, but the state agency can also issue stiff penalties for misconduct.

Segue: Let’s look at some other common ways Standard D has been violated...

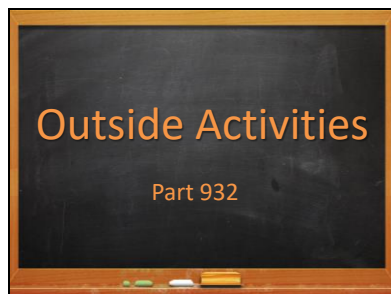
## Slide 21



Those are just two examples of State employees who have violated ethics laws. Let’s look at some other common violations of Standard D.

(Review slide)

## Slide 22



Let's move away from the Standards, and look at some other aspects of ethics rules that sometimes lead to conflicts of interest.

The first topic is Outside Activities, governed by 19 NYCRR Part 932

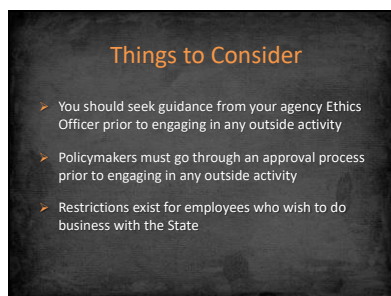
This is on page 17 of the PLG.

## Slide 23



- The regulations apply to those in policymaking positions.
- Most often thought of as a second job, it can go beyond that - May be employment, membership on a board, or volunteer work, etc.
- Occurs outside of your regular work hours and without utilizing government resources.

## Slide 24



*(review slide)*

Your Ethics Officer understands potential conflicts for your agency best. It is important to get approval in advance to avoid conflicts of interest. JCOPE will not approve an outside activity that has been rejected by the agency.

## Slide 25

**What's New?**

- The compensation threshold for seeking JCOPE approval for an outside activity increased from \$4,000 to \$5,000.
- Covered persons are prohibited from receiving any compensation, in whatever form, for the rendering of consulting, representation, advisory, or other services in connection with any proposed or pending bill or resolution in the senate or assembly.
- If you have received approval for an outside activity, you must inform your agency's Ethics Officer if you are still engaged in the outside activity on a yearly basis.

(review slide)

- The compensation threshold increased by \$1k
- In other words, you can't lobby the lawmakers
- Now you have to notify your EO annually that your outside job continues

## Slide 26

**What's New?**

Outside Activity	Required Approvals / Actions
A job, employment (including public employment), or business venture that generates, or is expected to generate, between \$1,000 and \$5,000 in Compensation annually	Approving Authority must approve
A job, employment (including public employment), or business venture that generates, or is expected to generate, more than \$5,000 in Compensation annually	Approving Authority and the Commission must approve
Holding elected or appointed public office (regardless of Compensation) as an outside activity	Approving Authority and the Commission must approve
Serving as a director or officer of a for-profit entity (regardless of Compensation)	Approving Authority and the Commission must approve
Serving as a director or officer of a not-for-profit entity	
➤ Compensation is \$0 - \$999 annually	Approval not required, but must notify Approving Authority in writing prior to commencing service
➤ Compensation is between \$1,000 and \$5,000 annually	Approving Authority must approve
➤ Compensation is more than \$5,000 annually	Approving Authority and the Commission must approve

This slide shows the layers of approval that policymakers need to go through for Outside Activities.

It's found on pg. 18 of the PLG.

## Slide 27

**Conflicts of Interest  
+  
Outside Activities**

Now let's look at how conflicts of interest can arise in the area of Outside Activities.

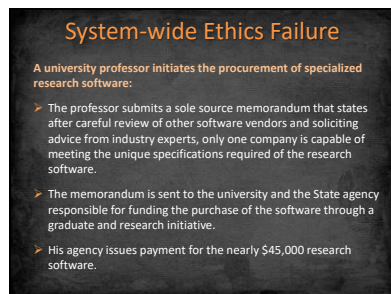
## Slide 28



As many of you are aware, when the state needs to obtain any type of goods or services, it obtains those goods or services through the open competitive bidding process, which is designed to make sure that all vendors are on an equal playing field.

Here's an example where that bidding process resulted in a "system-wide ethics failure."

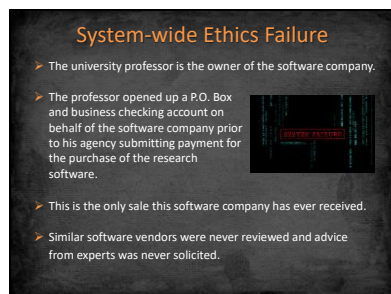
## Slide 29



*(review slide)*

So far, so good, right?

## Slide 30

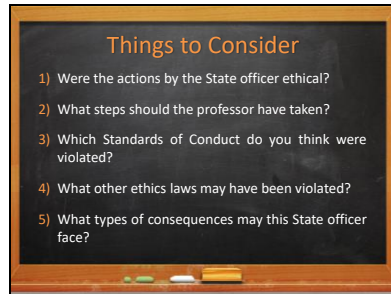


So what's the problem? Well...

*(review slide)*

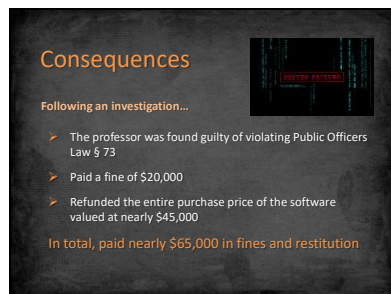
Let's break this down a bit...

## Slide 31



1. No, he's not being at all honest here
2. He should have followed procurement protocol – he could have won this contract through competitive bidding
3. D, securing privileges; E/G, financial conflicts; H, integrity standards
4. POL§73(15) prohibits state emp from contract decisions < \$1,000 where there is a personal financial interest
5. Let's look at the consequences...

## Slide 32



*(Review slide)*

- Although we don't know if he was formally fired, his name did not appear on the faculty rolls the next year
- The public trust is diminished by this professor's actions, and the reputation of the agency is tarnished as well

## Slide 33



Our next topic area relates to gifts. These regulations are found in 19 NYCRR Part 933. This is found on pg. 21 of the PLG.

Segue: First, let's define a "gift"

## Slide 34



It starts simple: Anything of value that is worth \$15 or less is not considered a gift.

For everything else, we need to do a "gift analysis."

The first step of that analysis is to look at things that are NOT gifts...

## Slide 35



See "Allowable Gifts" on pg. 21-22 of PLG. These items are not considered to be "Gifts" under the regulations.

*(Photos: Awards, discounts avail to public, honorary degrees, promotional giveaways, gifts from family or personal friends, and meals at professional programs)*

You may, therefore, accept these items provided that your acceptance does not create an actual or apparent conflict of interest or give the impression of improper influence, in violation of POL §74.

Full set of exclusions are available in the regulations Part 933.4

Segue: One gift exclusion that bears discussion relates to "Widely Attended Events"...



## Slide 36



One of the most common gift exclusions is the “Widely Attended Event” exclusion. There are many factors to consider when deciding if this event is professionally relevant, or designed to influence you.

See pg 23 of PLG

## Slide 37



(Review slide)

### Parameters of Exclusion

- Food and beverage is only permissible if offered to all participants
- The exclusion does not cover entertainment, recreational, or sporting activity unless the presentation addressing the public interest or concern is delivered during the entertainment, recreational, or sporting activity  
(Example: State employee given an award for their service at a Baseball game)

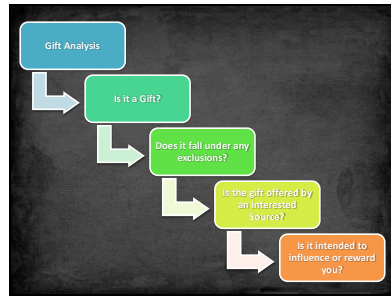
## Slide 38



Two other kinds of events are also excluded from the gift regulations: political and charitable events whose main purpose is fund-raising for those causes. Remember to review the event with your Ethics Officer first prior to accepting the invitation. They have to be “bona fide” events, and not a cover for an event intended to influence you.

Segue: So now you know what is not a gift, let's return to the analysis...

## Slide 39



The main idea of the gift analysis revolves around two central questions.

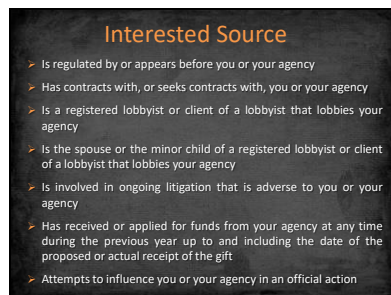
- Is it a gift?
- Who is offering to me? We'll review who is an "interested source" next.

Once you've determined the answer to those two questions, you will need to determine whether the acceptance of the gift is:

- A conflict of interest; and/or
- Intended to reward or influence you.

Because if that's the case, the answer is NO, you can't accept the gift.

## Slide 40

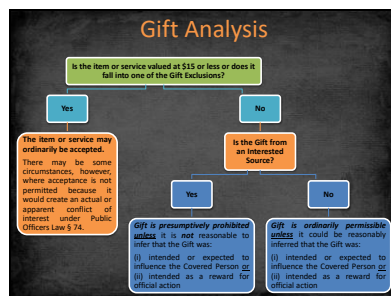


(review slide)

Who is an "interested source"? Basically, it is anyone with a vested interest in trying to influence you. An interested source can be a person or an organization/entity. The definition of an "interested source" is found in JCOPE's Gift regulations (part 933) and on pg. 21 of the PLG.

Segue: So here's the analysis...

## Slide 41




This analysis chart can be found on pg. 24 of the PLG.

(Review slide)

We want you to know how to think about gifts so that you can react appropriately in the moment if you are offered something that is impermissible.

Segue: There's a couple of other things to keep in mind about the acceptance of gifts...

## Slide 42



**Gifts to Third Parties are Prohibited**  
You cannot redirect an impermissible Gift to a third party, including your spouse or child or a charitable organization.

**Multiple Gifts from the Same Source**  
If you accept multiple *permissible* Gifts from the same source, you could, depending on the circumstances, violate Public Officers Law § 74 by creating an actual or an apparent conflict of interest or an appearance of improper influence.

If the gift analysis suggests that you're not allowed to accept the gift, you can't ask the giver to direct this gift to a third party.

You also need to be careful about accepting multiple permissible gifts from the same source, because it can create the impression that you might have a conflict of interest or could be influenced by these multiple gifts.

Segue: Let's look at how conflicts of interest can arise when gifts are involved.

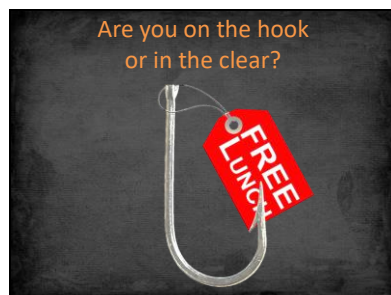
## Slide 43



Let's talk next about how conflicts of interest can arise in the area of gifts.

Segue: let's look at an example of gifting in the workplace...

## Slide 44



The next case study asks you to examine the circumstances and decide if the facts are okay or a violation – in other words, are you are on the hook or in the clear?

## Slide 45

**Sports Swag**



A State university employee is responsible for cleaning laundry and sports equipment.

To show appreciation for the clerk's hard work, he is gifted with sports apparel, tickets to university games, and often receives cash tips as a thank you for doing a good job.

**Sports Swag = \$4,672**

This employee maintained the locker room at a university that hosted a NFL summer camp, and the players would routinely thank him for his work in various ways.


*(review slide)*

Keep in mind: he is a locker room attendant, not a director or policymaker.

Do you think this employee is on the hook or in the clear for accepting these gifts?

## Slide 46

**Things to Consider**



- State employees are prohibited from receiving any gift that was intended as a reward for performing their official duties.
- Violations of the gift ban are hefty - the law provides for a civil penalty of up to \$40,000 and the value of any gift, compensation or benefit received.

*(Review slide)*


POL §(73)(5) prohibits State employees from receiving any gift of more than nominal value – including cash, travel and meals – that was intended as a reward for performing their official duties.

So now what do we think?

Segue: So what were the consequences?

## Slide 47

**Consequences**



The state employee is on the hook, and paid a fine to the state university of more than \$4,600 for violating the gift restrictions.

The State employee paid a fine of more than \$4,600, so basically he had to make restitution for what he had received improperly.

Points to consider: you don't need to be a high-ranking official or a policymaker to run into conflicts of interest. The Standards of Conduct apply equally to all public servants. People of good will and intent can also inadvertently run into violations of the Public Officers Law. It can be hard to refuse an improper gift when it is offered, because of social politeness, as well as our inherent wish to receive something nice.

Slide 48



Our next topic area relates to Official Activity Expense Payments. For those of you who have been around for a while, this was formerly called "Travel reimbursement payments."

These regulations are found in 19 NYCRR Part 931.

This is found on pg. 27 of the PLG.

Segue: This is a brief "FYI" on the topic...

Slide 49



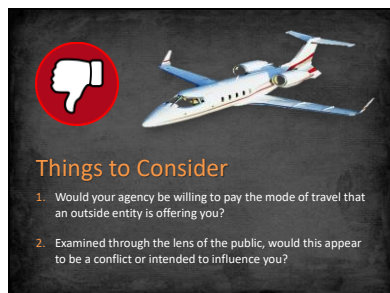
For example, in your role as a State officer or employee, you are invited to speak at a conference. The conference organizer might offer to pay your travel expenses. This is allowable if:

*(Review slide)*

The same analysis applies here- you can't accept things of value from an interested source.

Note: travel expenses greater than \$1,000 are reportable on your FDS

Slide 50



So before you can accept this offer, consider this... *(Review slide)*

We must look at all of these situations through the eyes of the public.

Segue: So we have to think about receiving items of value in the same way...

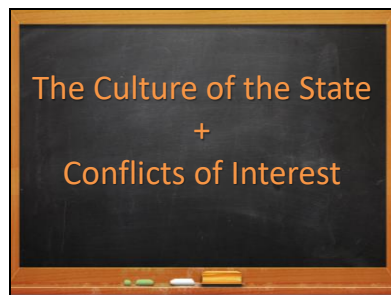
Slide 51



You can see when we stack the rules for Gifts (Pg. 21), Official Activity Expenses (pg. 27), and Honorariums (Pg. 25), the analysis is the same for all three.

- If offered by an Interested source, its most likely prohibited
- It cannot give the appearance of a conflict of interest; and
- It cannot be intended as a reward for an official action (I won the contract, grant, etc.) or intended to influence you (I want you to help me with...)

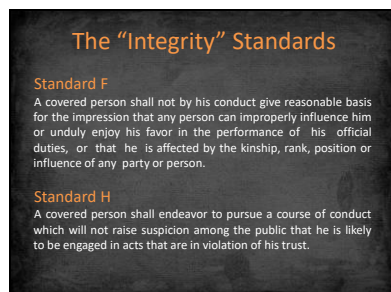
Slide 52



If you asked the public what they think of the state of ethics in NY gov't, what would they say?

We all play a role in fostering a culture of ethical conduct. That's where the integrity standards come in...

Slide 53



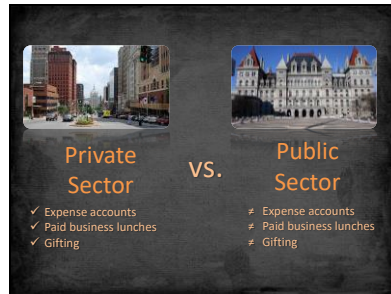
How do we begin the task of fostering a culture of ethical behavior in the public sector?

The guidelines to help us are already built into the standards of conduct. We call Standard F and H the "Integrity Standards".

These provide guidelines for making ethical choices while in state employment. (*Review standards*)

Segue: Being in the public sector means we have clear standards of conduct laid out for us. It's very different in the private sector...

## Slide 54

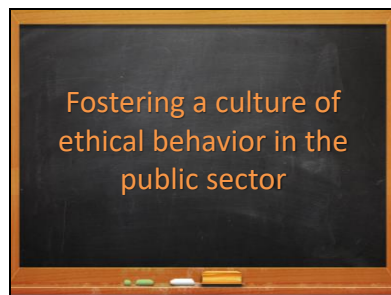


Private sector culture is very different from public sector culture. How many people have worked in the private sector?

- Regularly accepted business practices within the private sector include expense accounts, paid business lunches, and on occasion, gifting of concert, recreational, & sporting events as a “thank you” or as an incentive for doing business with a specific organization.
- However, in the public sector, these accepted business practices are generally prohibited as they may create the appearance that you can be influenced by the gift, or it may be a reward for some official action that is favorable to the private sector organization.

If someone in the private sector offers you a gift, they may not be aware that it violates state ethics laws.

## Slide 55



It’s up to us, as public employees, to foster a culture of ethical behavior in the public sector.

Segue: First, we have to define what the public expects from us as State employees.



## Slide 56



(Review slide)

This is what ethics is all about.

## Slide 57



State service is based on these basic principles:

**Public Office is a Public Trust** – We are accountable to the public.

- FDS Form helps employees identify financial/business affiliations that may conflict with their State job. Form is accessible to public which aids transparency & accountability.
- Ethics training helps you to stay abreast of ethics laws.
- Ethics laws can't address every situation. Your Ethics Officer & JCOPE are here to provide guidance.

**Serving the Public Interest** – It is our duty to act in the public interest by:

- avoiding conflicts of interest,
- maintaining impartiality, and
- avoiding the appearance of impropriety

**While it may be legal, is it ethical** – Focus on the larger ethics of a situation rather than narrowly examine whether it's legal. Always consider the appropriateness of such activity under the lens of the code of ethics.

## Slide 58



Developing ethical decision-making skills is critical in avoiding conflicts of interest and navigating potential ethical pitfalls.

Segue: Just because something might be legal doesn't mean you should do it. Let's take a look at a situation that might be legal, but may not be wise.

## Slide 59

**The Conundrum:**

A policymaker would like to hire an employee to do some remodeling work on his house. The work is unrelated to their agency positions and would occur outside their regular work hours.

The policymaker:

- will pay market rate for this outside activity
- is not related to the employee
- does not supervise this employee or have any direct authority over the employee's position at the agency.

However, the policymaker is at a significantly higher pay grade and in a superior administrative role at the agency.

*(Review scenario)*

Let's take a look at some of the questions we should ask ourselves before we evaluate if this is

- permissible, and
- would it be ethical?

## Slide 60

**Things to Consider**

1. Is this a job the employee would want to take or would they feel obligated to accept the work from a superior?
2. Would the employee feel obligated to charge a lesser rate?
3. How would someone determine what "market value" would be in this situation?
4. What if the job turns sour? Could there be a situation where two employees are now in a dispute?
5. Could this appear to be a conflict to someone looking from the outside?

Let's hone our ethical decision-making skills:

- Is it possible this employee only said "yes" to this job because of who you are in the agency?
- If so, would they feel pressure to offer a "deal" on the job?
- How many other estimates would be enough?
- Imagine if problems with the job come up... It's an external job with internal business repercussions.
- What are the optics? Would it look bad to the public?

Segue: Situations like this can be tough to navigate, so seek guidance.

## Slide 61

**Our reputation suffers**

We are viewed as untrustworthy, we may face disciplinary action, civil penalties, unemployment, and difficulty in securing new employment

**The reputation of our agency suffers**

- Quality of applicants applying to state jobs is impacted - people may be less likely to apply to jobs
- Morale suffers
- People may not want to do business with us

**The reputation of state government suffers**

Newspaper articles are published; Public confidence is diminished

## Slide 62



Although we share responsibility for creating an ethical culture, ultimately, you are responsible for the actions that you take. While your Ethics Officer & JCOPE are here to help you navigate the ethics laws, the buck stops with you.

- Laws are put in place to guide ethical behavior
- Agencies have resources to help employees
- Employees must be aware of the rules, and report misconduct when they see it

## Slide 63

**Seek Guidance**

- We seek guidance and encourage others to seek guidance
- We examine situations through the lens of the public

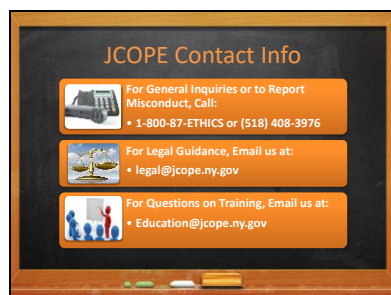
**We practice ethical decision making**

- Even if it's legal, is it ethical?

**Report Possible Misconduct**

- Talk to your Ethics Officer and/or general counsel
- Contact JCOPE - Misconduct Hotline

## Slide 64



Here's how to reach out for advice and guidance.

Thank you for your participation!